Datuk Justine Jinggut v Pendaftar Pertubuhan

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01–113 OF 2006
ZAINUN ALI, RAMLY ALI AND ZAHARAH IBRAHIM JJCA
22 NOVEMBER 2011

Administrative Law — Judicial review — Cancellation of registration of society — Cancellation of Parti Kebangsaan Sarawak as a society — Cancellation of registration without reasons being given — Whether registrar complied with statutory requirements — Whether appellant given opportunity to make representations — Registrar relying on documents not divulged to appellant — Whether denial of natural justice — Court to scrutinise decision for process and substance — Whether registrar's decision proportionate to dispute — Whether diffidence or indifference by registrar — Whether registrar's discretion arbitrarily exercised — Whether decision to cancel registration ultra vires and void

Constitutional Law — Fundamental liberties — Equality before the law — Cancellation of Parti Kebangsaan Sarawak as a society without reasons being given — Whether breach of fundamental liberty — Federal Constitution art 8

Constitutional Law — Fundamental liberties — Freedom of speech — Cancellation of Parti Kebangsaan Sarawak as a society without reasons being given — Whether breach of fundamental liberty — Federal Constitution art 10

Unincorporated Associations Societies — Registration — Cancellation of registration — Cancellation of Parti Kebangsaan Sarawak as a society — Dispute on membership and office bearers — Cancellation of registration without reasons being given — Whether registrar complied with statutory requirements — Whether appellant given opportunity to make representations — Registrar relying on documents not divulged to appellant — Whether denial of natural justice — Societies Act 1966 ss 13(1)(c)(ix), 13(2) & 16(1)

This appeal arose from the decision of the Registrar of Societies who cancelled the registration of Parti Kebangsaan Sarawak ('SNAP') on 5 November 2002. SNAP is a political party, established and registered since 10 April 1961. Datuk Amar James Wong Kim Min ('Datuk Amar') was the president and the appellant was the secretary general. Datuk Amar informed members in a meeting of the Central Executive Committee ('CEC') on 20 April 2002, that although he would be overseas for a surgical knee operation he would

nevertheless, by virtue of article X Clause 2 of Constitution of SNAP, remain the Chairman of CEC. He emphasised that he would be incommunicado with the appellant at all times during his sojourn. However, on 14 May 2002, deputy president, YB Datuk Sri Peter Tinggom ('the deputy president') issued a notice to convene a meeting of the CEC on 29 May 2002. According to the appellant, the deputy president with some others, broke into and entered SNAP'S headquarters unlawfully on 29 May 2002 and held the meeting there. It was the appellant's case that the meeting was held without a quorum and in breach of the Constitution of SNAP. The Deputy President went on to purportedly convene a National Council Meeting on 23 June 2002. An extraordinary general assembly meeting ('EGAM') was also held on 11 August 2002. Several individuals including the deputy president were elected and appointed office-bearers of the National Council of SNAP at the EGAM. One YB Datuk William Mawan ak Ikom was elected as President and one YB Dr Judson Sakai Tagal was appointed as secretary general. The 'rebel' group then informed the respondent's office that SNAP'S office-bearers were to be changed to those newly appointed. The respondent then pursuant to s 16(1) of the Societies Act 1966 ('the Act') issued a notice dated 2 July 2002 ('the s 16 notice') to SNAP, requiring it to produce evidence of settlement of the dispute on memberships or institution of legal proceedings to settle the purported dispute. The appellant vide his letter dated 19 July 2002 explained to the respondent why the question of a 'dispute' relating to office-bearers of SNAP did not arise, since there was no such dispute. The letter also laid out the sequence of events. The president also responded to the respondent's letter. However despite the explanation, the respondent issued a notice dated 13 September 2002, pursuant to s 13(2) of the Act ('the s 13(2) notice'). It was the appellant's case that the s 13(2) notice was wrongly issued since there was no dispute as to the identity of office-bearers who had been property constituted. The president responded to this notice. However, the respondent proceeded to issue a cancellation order under s 13(1)(c)(ix) of the Act on 5 November 2002, which cancelled the registration of SNAP. No reasons were given. The appellant's application for judicial review was dismissed. Hence, this appeal.

Held, allowing the appeal with costs here and below:

(1) Whilst the respondent had complied with the statutory requirements in ss 13 and 16 of the Act by giving the appellant the opportunity to make representations, the respondent's reliance on documents not divulged to the appellant in arriving at his decision amounted to a denial of natural justice, entitling the court to set aside the respondent's decision (see para 44).

(2) A body, statutory or administrative, must as a general rule, give reasons for its decisions. Though it is not in every case that it should, that depends on what the facts are and what is fair in the circumstances. The giving of reasons is all the more compelling when a fundamental liberty

guaranteed by the Federal Constitution is adversely affected in consequence of a decision taken by a public decision-maker, as happened in the instant appeal where arts 8 and 10 appeared to have been offended. The furnishing of reasons enables an objective assessment of whether the decision is fair. Hence it forms an integral part of procedural fairness. Thus if no reason was given by the respondent, it was open for the court to conclude that he had no good reason inasmuch as it was open to conclude that the respondent had not exercised his discretion in accordance with the law (see paras 51, 53–54).

(3) The court has the power to scrutinise the authority's decision not only for process, but also for substance (see para 56).

(4) The decision of the respondent to cancel the registration of SNAP was not proportionate to the purported mischief (dispute) at which it was aimed. By virtue of the doctrine of proportionality, the respondent had not taken into account all relevant factors and had taken into account those which were irrelevant (see para 60).

(5) The appellant and the president had replied to the respondent's notice. There was compliance with the statutory requirement of s 16(1) by the appellant. However, the respondent's response to the explanations in answer to his s 16(1) notice was one of diffidence. Or indifference. Or both (see paras 63–66).

(6) The statutory responsibility imposed on the respondent in s 16(1) is to inquire as to the settlement of the dispute on memberships and/or evidence of any institution of legal proceedings to settle the purported dispute. The discretion given the respondent in s 16(1) is not unfettered. The respondent had not exercised his discretion in accordance with the law. In fact, in deciding the way he did, in view of the facts before him, his was an arbitrary decision (see paras 70 & 73).

(7) The respondent's reliance of the list of new office-bearers of SNAP in considering that there was a dispute was not justified, since the EGAM was unlawfully convened. By premising his decision on the purported dispute as to the validity of the appointment of the CEC members and the results of the illegally convened EGAM, the respondent had taken into account irrelevant considerations. The respondent had also not taken into account relevant consideration in that there was evidence of settlement of dispute on membership in the holding of an upcoming Triennial General Assembly then (see paras 76–77).

(8) The respondent's decision in purporting to cancel the registration of SNAP was ultra vires and void and the respondent had thus acted in excess of his jurisdiction (see paras 70 & 73).

[Bahasa Malaysia summary

Rayuan ini timbul daripada keputusan Pendaftar Persatuan yang telah membatalkan pendaftaran Parti Kebangsaan Sarawak ('SNAP') pada 5 November 2002. SNAP adalah parti politik, yang ditubuhkan dan didaftarkan sejak 10 April 1961. Datuk Amar James Wong Kim Min ('Datuk Amar') adalah presiden dan perayu adalah ketua setiausaha Datuk Amar telah memberitahu ahli-ahli dalam satu mesyuarat Jawatankuasa Eksekutif Pusat ('JEP') pada 20 April 2002, bahawa meskipun beliau akan ke luar negara untuk pembedahan surgeri lutut, beliau akan, menurut perkara X Fasal 2 Perlembagaan SNAP, kekal sebagai pengerusi JEP. Beliau menekankan bahawa beliau tidak akan dapat dihubungi oleh perayu pada sepanjang masa tersebut. Walau bagaimanapun, pada 24 Mei 2002, timbalan presiden, YB Datuk Sri Peter Tinggom ('timbalan presiden') telah mengeluarkan notis untuk mengadakan mesyuarat JEP pada 29 Mei 2002. Menurut perayu, timbalan presiden bersama beberapa yang lain, telah pecah masuk dan memasuki ibu pejabat SNAP secara tidak sah pada 29 Mei 2002 dan mengadakan mesyuarat di situ. Adalah kes perayu bahawa mesyuarat itu telah diadakan tanpa korum dan melanggar Perlembagaan SNAP. Timbalan presiden seterusnya mengadakan Mesyuarat Majlis Tempatan pada 23 Jun 2002. Satu mesyuarat perhimpunan am luar biasa ('EGAM') juga telah diadakan pada 11 Ogos 2002. Beberapa individu termasuklah timbalan presiden telah dipilih dan dilantik pemegang jawatan Majlis Tempatan SNAP di EGAM itu. Seorang bernama YB Datuk William Mawan ak Ikom telah diundi sebagai presiden dan seorang bernama YB Dr Judson Sakai Tagal telah dilantik sebagai ketua setiausaha. Kumpulan 'rebel' kemudian telah memberitahu pejabat responden bahawa pemegang jawatan SNAP patut ditukar kepada yang telah baru dilantik. Responden kemudian menurut s 16(1) Akta Persatuan 1966 ('Akta tersebut') telah mengeluarkan notis bertarikh 2 Julai 2002 ('notis s 16') kepada SNP, yang memerlukannya mengemukakan bukti penyelesaian pertikaian berhubung keahlian atau bermulanya prosiding undang-undang untuk menyelesaikan pertikaian yang dimaksudkan itu. Perayu melalui suratnya bertarikh 19 Julai 2002 menjelaskan kepada responden kenapa persoalan berhubung 'dispute' berkaitan pemegang jawatan SNAP tidak timbul, memandangkan tidak ada pun pertikaian sedemikian. Surat itu juga menyatakan urutan kejadian. Presiden juga menjawab kepada surat responden itu. Walaupun terdapat penjelasan, responden telah mengeluarkan notis bertarikh 13 September 2002, menurut s 13(2) Akta tersebut ('notis s 13(2)'). Ini adalah kes perayu bahawa notis s 13(2) telah dikeluarkan secara salah oleh kerana tiada pertikaian berhubung identiti pemegang jawatan tersebut yang telah dibentuk secara wajarnya. Presiden telah menjawab kepada notis ini. Walau bagaimanapun, responden telah meneruskan untuk mengeluarkan perintah pembatalan di bawah s 13(1)(c)(ix) Akta tersebut pada 5 November 2002, yang membatalkan pendaftaran SNAP. Tiada sebab diberikan.

Permohonan perayu untuk semakan kehakiman ditolak. Justeru itu, rayuan ini. A

Diputuskan, membenarkan rayuan dengan kos di mahkamah ini dan Mahkamah Tinggi: B

(1) Meskipun responden telah mematuhi keperluan statutori dalam ss 13 dan 16 Akta tersebut dengan memberikan perayu peluang untuk membuat representasi, kebergantungan responden terhadap dokumen-dokumen yang tidak didedahkan kepada perayu untuk tiba kepada keputusannya membentuk penafian keadilan asasi, yang memberi hak mahkamah untuk mengetepikan keputusan responden (lihat perenggan 44). C

(2) Sebuah badan, secara statutori atau pentadbiran, perlu sebagai rukun am, memberikan sebab untuk keputusannya. Meskipun ia bukan untuk setiap kes ia diperlukan, yang bergantung kepada apakah faktanya dan apakah yang adil dalam keadaan tersebut. Pemberian sebab adalah lebih mendesak apabila kebebasan asasi yang dijamin oleh Perlembagaan Persekutuan telah terjejas secara bertentangan akibat keputusan yang diambil oleh pembuat keputusan awam, sebagaimana yang berlaku dalam rayuan ini di mana perkara 8 dan 10 dilihat sebagai telah dilanggari. Pengemukaan sebab-sebab membolehkan penilaian objektif dibuat sama ada keputusan itu adil. Justeru itu ia membentuk bahagian penting dalam prosedur keadilan. Oleh itu jika tiada alasan diberikan oleh responden, ia adalah terbuka untuk mahkamah memutuskan bahawa dia tiada sebab kukuh setakat mana ia adalah terbuka untuk memutuskan bahawa responden tidak melaksanakan budi bicaranya menurut undang-undang (lihat perenggan 51, 53–54). D E F

(3) Mahkamah mempunyai kuasa untuk meneliti keputusan pihak berkuasa bukan sahaja dari segi proses, tetapi juga dari segi substans (lihat perenggan 56). G

(4) Keputusan responden untuk membatalkan pendaftaran SNAP tidak seimbang dengan muslihat yang dimaksudkan (pertikaian) yang ingin dicapai. Menurut doktrin keseimbangan, responden tidak mengambil kira semua faktor-faktor yang relevan dan telah mengambil kira yang mana tidak relevan (lihat perenggan 60). H

(5) Perayu dan presiden telah menjawab kepada notis responden. Terdapat pematuhan keperluan statutori s 16(1) oleh perayu. Walau bagaimanapun, jawapan responden terhadap penjelasan bagi menjawab notis s 16(1) adalah suatu yang kurang meyakinkan. Atau sikap tidak peduli. Atau kedua-duanya (lihat perenggan 63–66). I

(6) Tanggungjawab statutori yang dikenakan ke atas responden dalam s 16(1) adalah untuk menyiasat berhubung penyelesaian pertikaian

keahlian dan/atau bukti apa-apa prosiding undang-undang yang dimulakan bagi menyelesaikan pertikaian yang dimaksudkan. Budi bicara yang diberikan kepada responden dalam s 16(1) tidak terjejas. Responden tidak melaksanakan budi bicaranya menurut undang-undang. Bahkan, dalam membuat keputusan seperti mana yang dilakukannya, berdasarkan fakta di hadapannya, dia telah membuat keputusan sewenang-wenangnya (lihat perenggan 70 & 73).

(7) Kebergantungan responden terhadap senarai pemegang jawatan SNAP dalam mempertimbangkan bahawa terdapat pertikaian tidak wajar, memandangkan EGAM telah diadakan secara tidak sah. Dengan mengasaskan keputusannya berdasarkan pertikaian yang dimaksudkan berhubung kesahan pelantikan ahli-ahli JEP dan keputusan EGAM yang telah diadakan secara haram, responden telah mengambil kira pertimbangan yang tidak relevan. Responden juga *tidak* mengambil kira pertimbangan relevan yang mana bukti penyelesaian keahlian dalam mengadakan Perhimpunan Am Tiga Tahun Sekali yang bakal diadakan pada masa itu (lihat perenggan 76–77).

(8) Keputusan responden bagi maksud membatalkan pendaftaran SNAP adalah ultra vires dan tidak sah dan responden dengan itu telah bertindak melampaui bidang kuasanya (lihat perenggan 82).]

Notes

For a case on freedom of speech, see 3(2) *Mallal's Digest* (4th Ed, 2011 Reissue) para 2387.

For cases on equality before the law, see 3(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2340–2361.

For cases on judicial review in general, see 1(1)*Mallal's Digest* (4th Ed, 2010 Reissue) paras 249–308.

For cases on registration, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 3150–3152.

Cases referred to

B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] MLJ 169; [1962] 1 LNS 14, PC (refd)

Breen v Amalgamated Engineering Union [1971] 2 QB 175, CA (refd)

Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal [1996] 1 MLJ 481, CA (refd)

Padfield and Others v Minister of Agriculture Fisheries and Food and Others [1968] 1 All ER 694, HL (refd)

Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan [2002] 3 MLJ 72; [2002] 4 CLJ 105, FC (refd)

R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145; [1997] 1 CLJ 147, FC (refd)

Rohana bte Ariffin & Anor v Universiti Sains Malaysia [1989] 1 MLJ 487; [1988] 2 CLJ (Rep) 390, HC (refd)

Legislation referred to

Federal Constituition arts 8, 10
Immigration Act 1959/63 s 59A
Rules of the High Court 1980 O 53 r 3(23)
Societies Act 1966 ss 13, 13(1)(c), (1)(ix), (2), 16, 16(1)

Appeal from: Application for Judicial Review No R1–25–137 of 2002 (High Court, Kuala Lumpur)

Khoo Guan Huat (Skrine) for the appellant.
Azizah Nawawi (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

Zainun Ali JCA (delivering judgment of the court):

[1] The issues to be found in this appeal are grounded on matters of natural justice or breach thereof and the principles applicable in judicial review of administrative decisions, encompassing the dictates of substantive and procedural fairness.

[2] The said issues arose when the Registrar of Societies chose to cancel the registration of Parti Kebangsaan Sarawak ('SNAP') on 5 November 2002, without assigning any reason, after due notices under ss 16(1) and 13(2) of the Societies Act, were served on the appellant.

BACKGROUND

[3] SNAP is a political party, established and registered since 10 April 1961. SNAP has been active politically and was a member of the Barisan Nasional (the governing political party). At its Triennial General Assembly ('TGA') on 19 February 2000 and 20 February 2000 the following persons were elected office-bearers. They were:

President:	Datuk Amar James Wong Kim Min
Deputy President:	YB Datuk Sri Peter Tinggom ak Kemarau
Senior Vice President:	YB Richard Wong Shoon Fook
Vice President (7):	YB Datuk William Mawan Ikom
	YB Peter Nyarok ak Entrie
	YB Senator Datuk William Lau

	YB Jacob Sagan
	YB Sylvester Entri ak Muran
	YB Peter Nansian Bguisie
	Encik Giman Itam (deceased)
Vice President (Youth):	YB Dr Judson Sakai Tagal
Vice President (Wanita):	Puan Winnie Jolly
2 Vice Presidents:	Tuan Hj Awang Bungsu
(Special Interest Group)	Vacant
Secretary General:	Datuk Justine Jinggut
Treasure General:	Encik Alex Lai Boon Luan
Deputy Secretary-General:	Encik Edmund Stanley Jugol
Assistant Secretary General Organising Secretary:	Encik Dennis Liew
Assistant Treasurer General:	Vacant
Publicity Officer:	Encik Detta Samen
Financial Officer:	YB Peter Nansian Ngusie

[4] The events leading to the eventual cancellation of SNAP began when the President Datuk Amar James Wong Kim Min informed members in a meeting of the Central Executive Committee ('CEC') on 20 April 2002, that although he would be overseas for a surgical knee operation he would nevertheless, by virtue of article X cl 2 of Constitution of SNAP, remain the chairman of CEC. He emphasised that he would be incommunicado with the appellant at all times during his sojourn.

[5] Thereafter, in exercising his power as chairman of the CEC, the president instructed the appellant to convene a meeting of the CEC to be held on 15 June 2002. This meeting was later brought forward to June 2002.

[6] However, before that could happen, on 23 May 2002, the appellant received a letter dated 20 May 2002 from the Deputy President, YB Datuk Sri Peter Tinggom ('the Deputy President's letter') purporting to direct him to convene a CEC meeting on 29 May 2002.

[7] It is the appellant's case that the deputy president's letter was contrary to the earlier letter ie the president's notice of 20 May 2002 and was in contravention of article X cll 13 and 19(1) of the Constitution of SNAP.

[8] Subsequently the deputy president purportedly issued a notice dated 14 May 2002 to convene a meeting of the CEC on 29 May 2002. According to the appellant, the deputy president with some others, broke into and entered

SNAP'S headquarters unlawfully on 29 May 2002. The said premises were closed since 24 May 2002 in conjunction with the Gawai holidays.

[9] The deputy president purportedly held a CEC meeting in the said premises on 29 May 2002. It is the appellant's case that it was held without a quorum and in breach of article X cl 1(a), (b), (c), (d), (e), (f), (g), and cl 14 of the Constitution of SNAP. It is also the appellant's case that the resolutions passed and/or decisions purportedly taken at this CEC meeting were null and void and of no effect.

[10] The deputy president went on to purportedly convene a national council meeting on 23 June 2002. It is the appellant's case that this meeting was held without lawful authority and because it is in breach of the constitutional provisions of SNAP, all resolutions purportedly passed and/or decisions taken at the said meeting were null and void and of no legal effect, including but not limited to the calling of an extraordinary general assembly meeting ('EGAM') which was to be held on 11 August 2002.

[11] Arising out of the EGAM, several individuals including the deputy president were elected and appointed office-bearers of the National Council of SNAP at the EGAM held on 11 August 2002. They are as follows:

President:	YB Datuk William Mawan ak Ikom
Deputy President:	YB Datuk Peter Tinggom ak Kemarau
Senior Vice President:	YB Peter Nansian ak Ngusie
Secretary General:	YB Dr Judson Sakai Tagal
Treasurer:	YB Dato Seri Tiong King Sing
Members:	YB Peter Nyarok ak Entrie
	YB Jacob Dunggau Sagan
	YB Senator Datuk William Lau Kung Hui
	YB Sylvester Entrie ak Muran
	YB Dr Tekhee @ Tiki ak Lafe
	Encik Hii Ching Chieng
	Encik Joseph Jinggui
	Encik George Garai
	Encik Jelain ak Mersat
	Encik Paul Igai
	Encik Simon Ong Hock Kheng
	Puan Winnie Jolly
	Dr Roland Mattu

[12] It is the appellant's case that close on the of heels of the purported

EGAM held on 11 August 2002, an attempt was made by this 'rebel' group to inform the respondent's office that SNAP'S office-bearers were to be changed (to those newly appointed) from the erstwhile team, who were appointed on 19 February 2000 and 20 February 2000.

[13] As a consequence the respondent, pursuant to s 16(1) of the Societies Act 1966 (Rev 1957) issued a notice dated 2 July 2002 ('the s 16 notice') to SNAP, requiring it:

(a) *to produce evidence of settlement of the dispute on memberships* or

(b) *institution of legal proceedings to settle the purported dispute.* (Emphasis added.)

[14] The appellant's response to the respondent was contained in a letter dated 19 July 2002. The letter explained to the respondent why the question of a 'dispute' relating to office-bearers of SNAP did not arise, since there was no such dispute. If the appellant's letter of 19 July 2002 to the respondent could be paraphrased, the following sequence of events were laid out:

2 April 2002	The president chaired the CEC meeting. He announced intention of going overseas for knee surgery. He said that he will, however, be in constant contact with the appellant who is the secretary general.
	In the same meeting which was attended by the Deputy President Datuk Sri Peter Tinggom, the members decided to expel Dato' Seri Tiong King Sing who was in breach of article V cl (iii) and (iv) of the Constitution of SNAP.
9 May 2002	The president left for Sydney, but did not hand over or delegate his power to anyone.
20 May 2002	The president directed the secretary general (the appellant), to call a CEC meeting on 15 June 2002. This meeting was then brought forward to 7 June 2002.
23 May 2002	Datuk Sri Peter Tinggom directed the appellant to issue a notice for a CEC meeting. The appellant did not comply with this direction.
2 May 2002	Datuk Sri Peter Tinggom himself then issued a notice to call for a CEC meeting to be held on 29 May 2002.
29 May 2002	Datuk Sri Peter Tinggom with some other people then broke into and entered into the premises of SNAP headquarters in Jalan Rubber, Kuching. It was closed since 24 May 2002, in conjunction with the Gawai holidays.

7 June 2002	A CEC meeting presided by the president was held. The meeting decided to empower the president to suspend any member found to have destroyed or attempted to destroy the Party's integrity.
9 June 2002	The president and the appellant (as the secretary general) applied for and was granted an interim injunction against Datuk Sri Peter Tinggom and seven vice-president from acting as the president and the secretary general. The injunction was also granted to prevent Datuk Sri Peter Tinggom from holding a national council meeting.
14 June 2002	The interim injunction was set aside.
22 June 2002	The president exercised his powers to suspend Datuk Sri Tinggom as a member of party, with immediate effect.
23 June 2002	Datuk Sri Peter Tinggom sent a notice for a national council meeting.
27 June 2002	A CEC meeting was held presided by the president, which affirmed and supported the decision to suspend Datuk Sri Peter Tinggom from the party.

[15] The appellant in his 19 July 2002 letter to the respondent and in response to the s 16 notice, outlined the fact that Datuk Sri Peter Tinggom could not have 'represented' the president since the president was never 'absent'. 'Absence' under the SNAP Constitution meant 'that written notice shall have been given by the absentee person and that he is not in a contactable and communicable state'.

[16] The appellant further explained to the respondent that Datuk Sri Peter Tinggom's notice dated 24 May 2002 to hold a CEC meeting, in the absence of the president, and not by the appellant as the secretary general, is invalid due to the following:

(a) the notice was not sent to five CEC members who had been appointed under article X cl 1(g) of the Constitution of SNAP which provided that the five CEC members have rights to receive the said notice;

(b) the notice was in breach of article X cll 13 and 19(1) Constitution of SNAP (under the said article, 14 days was required. Here, it was only five days);

(c) prior to the notice issued, the president had already directed the appellant to issue the notice on 26 May 2002 to convene a CEC meeting on 15 June 2002 which was then brought forward to 7 June 2002; and

(d) the appellant's further contention was that the CEC meeting was invalid

since it had only eight members attended breaching the requisite of the quorum was provided for in article X cl 1(a), (b), (c), (d), (e), (f), and (g) and article X cl 14(1).

[17] The appellant further explained to the respondent that the national council meeting of 23 June 2002 held by Datuk Sri Peter Tinggom was invalid for the following reasons:

(a) at the time the notice was issued by Datuk Sri Peter Tinggom he was suspended from the party;

(b) the notice contravened article vii cl 10(iii) of the Constitution of SNAP which provides that at least 21 days must be given;

(c) the president is the only person having the right to issue a notice for a national council meeting; and

(d) the purported national council meeting was presided by one Jelaing Mersat. This is in contravention of article IX clause I(iii) of the Constitution of SNAP which provided that 'The President shall during his term of office preside *at all* meetings of the National Council'. (Emphasis added.)

[18] The president himself then responded to the respondent's letter. The president explained in a letter dated 21 August 2002 that the actions of those who attended the purported meetings were in breach of the Constitution of SNAP.

[19] Thus insofar as the appellant was concerned, the above sequence of events had satisfied the requisites in both limbs of s 16(1).

[20] However despite the above explanation, the respondent issued a notice dated 13 September 2002, pursuant to s 13(2) of the 1966 Act ('the s 13(2) notice').

[21] It is the appellant's case that the s 13(2) notice was wrongly issued since there was no dispute as to the identity of office-bearers who had been property constituted.

[22] It will be helpful here to state the provision of s 13(1)(c)(ix) of the Act. It reads:

13 Cancellation and Suspension

(1) Subject to subsection (2), the Registrar may, in the following cases, cancel the registered of any society registered under Section 7 —

(a) …

(b) …

(c) If the Registrar is satisfied —

(ix) that the society has failed to comply with the notice served by him under subsection 16(1);

(2) Where the Registrar proposes to cancel the registration of any registered society under paragraph (1)(c) the Registrar —

(a) Shall notify one or more of the office-bearers of the society of his intention to cancel the registration by the society; and

(b) Shall give him or them the opportunity to submit reasons in writing within thirty days from the date of the notification why the registration should not be cancelled.

[23] Pursuant to the s 13(2) notice issued by the respondent, the president responded in the following manner. By letter dated 23 September 2002, the president reiterated that the letters dated 19 July 2002 and 21 August 2002 which had provided a detailed explanation as to the alleged dispute in SNAP had been sent. This letter went on to explain the impending Triennial General Assembly ('TGA') fixed on 22 February 2003 and 23 February 2003 which would in any event resolve any alleged dispute, if at all there is one.

[24] The 23 September 2002 letter reiterated the telephone conversation held between the respondent and the president where the latter's status as the president of the party was left in no doubt.

[25] A subsequent letter of 25 September 2002 was sent by the president to the respondent. This letter explained the legal position pursuant to the s 13(2) notice.

[26] The president stated that the meetings and action of the group led by the deputy president were therefore illegal, null and void since:

(a) the president did not give mandate to the deputy president to act on his behalf; and

(b) the capacity of the deputy president convening the CEC meeting without the president's mandate was unconstitutional and illegal.

[27] The respondent upon receiving this letter, however issued a cancellation order under s 13(1)(c)(ix) of the 1966 Act on 5 November 2002, which cancelled the registration of SNAP. No reasons were given.

[28] Shortly after that ie on 25 November 2002, the appellant pursuant to

O 53 r 3(23) of the Rules of the High Court 1980, applied for judicial review for:

(a) an order of certiorari to quash the respondent's decision to cancel the registration of SNAP;

(b) a declaration to render the respondent's decision null and void; and

(c) an order to stay the respondent's decision.

[29] The application above was dismissed with costs, by the High Court on 29 November 2002. Leave was however granted on 1 April 2003 for the appellant to appeal to the Court of Appeal to apply for judicial review.

[30] The High Court dismissed the appellant's application on 15 September 2006. Four days later, on 19 September 2006, the appellant filed his notice of appeal to appeal against the whole of the learned High Court judge's decision.

[31] At the heart of the appellant's appeal are issues of breach of fundamental liberty as guaranteed under arts 8 and 10 of Part II of the Federal Constitution and breach of natural justice.

[32] The appellant's memorandum of appeal cited the following grounds for judicial review of the respondent's action:

(a) non-disclosure of materials (grounds 1, 2 and 3);

(b) duty to give reasons (grounds 4, 5 and 6);

(c) substantive unfairness (ground 7);

(d) decision of ROS is not proportionate to the pursued objective;

(e) irrelevant considerations (ground 9);

(f) ROS acting in excess of jurisdiction (ground 10); and

(g) acting inconsistently (ground 11).

[33] Thus based on the foregoing, the appellant claimed that he had suffered unfairness both in respect of the process and substance of the respondent's decision.

[34] Is this true? We shall hereafter examine the grounds raised and the response of the respondent.

NON-DISCLOSURE OF MATERIALS

[35] It is the appellant's case that the respondent had failed to disclose the materials upon which he relied upon to reach his decision.

[36] The appellant's position was that the respondent had arrived at his decision to de-registrar SNAP after considering, inter alia, documents which were not available or known to the applicant, ie that the ROS had relied on:

(a) some written representations made by the deputy president's group who were then in but had since left SNAP; and

(b) discussions with this group and/or other officers in the Ministry of Home Affairs before making the said decision.

[37] It would appear as submitted by the appellant, that the respondent had requested for external information and/or further documents/ reports prior to making his decision. (These are documented in Vol 2 of the appeal record at pp 35–353, 356–365, 381–389, 390–392 and 393–394).

[38] It is the appellant's case that the respondent had considered the evidence contained in these documents to which the appellant had no access. The appellant contended that the non-disclosure of these documents to him amounted to grave deprivation of his right to be heard, for it is an imperative of procedural fairness that all materials relied upon by a public authority in giving his decision against a person should be brought to that person's attention and that that person should be given an opportunity to deal with them. The appellant cited two well known authorities that of *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] MLJ 169; [1962] 1 LNS 14 and *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487; [1988] 2 CLJ (Rep) 390 in support.

[39] The oft-quoted principle in *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] MLJ 169; [1962] 1 LNS 14:

> … if the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statement have been made affecting him: and then he must be given a fair opportunity to correct or contradict them,

still holds good.

[40] This leaves us with the question of whether the reliance of the respondent on documents not available to the appellant in arriving at his decision amounted to deprivation of his right to be heard, rendering the said decision impaired and thus of no legal effect and void.

[41] On this point, the respondent made much of the fact that this issue is no longer a live issue, it being dismissed by the learned High Court judge and the appeal had since been withdrawn.

[42] However, it is clear from the first three paragraphs of the grounds of appeal that these very same issues were very much in evidence in this appeal and were therefore justiciable.

[43] The respondent unwittingly or otherwise, had admitted the existence of the impugned documents (upon which he relied to make his decision) in his affidavit, whereby he stated that he relied on the following materials:

(a) laporan mengenai krisis dalam SNAP dan kandungan dokumen-dokumen berkaitan;

(b) lain-lain dokumen;

(c) ke semua perkara-perkara;

(d) dokumen dalaman Pejabat Pendaftar Pertubuhan atau Kementerian Dalam Negeri.

[44] Thus, we agree with the appellant that whilst it is true that the respondent had complied with the statutory requirements in ss 13 and 16 of the Societies Act 1966 by giving the appellant the opportunity to make representations, the reliance of the respondent on documents not divulged to the appellant, in arriving at his decision amounts to a denial of natural justice, entitling the court to set aside the respondent's decision.

[45] This argument naturally resists that of the respondent's which went the other way. The respondent took the position that the scheme of ss 16 and 13 of the Act does not require the respondent to give the applicant the right to be heard before the respondent 'forms an opinion that a dispute had occurred or that the Respondent was not satisfied of the identity of the persons who have been properly appointed as office-bearers'.

[46] We are unable to comprehend the respondent's position above. It is clear in our view that the purpose of discovery by any party, particularly the appellant in this appeal, is to ensure that the adjudicator 'must not hear evidence or receive representations from one side behind the back of the other' (see *B Surinder Singh Kanda*); as otherwise, it hampers the appellant's ability to present his case, giving rise to there being 'a breach of procedural fairness, putting the decision at risk of being susceptible to judicial review'. (*Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487).

[47] We therefore disagree with the learned High Court judge when he found that 'discovery is not relevant because the respondent has averred that *all* the documents pertaining to his decision-making process are before the court and there is no evidence adduced by the applicant to show that the materials put before the court are inaccurate or false'. (Emphasis added.)

[48] In our view, the facts as alluded to above, had in fact shown otherwise. **A**

FAILURE TO GIVE REASONS

[49] When the respondent de-registered SNAP as a political party, the respondent no reason was given. The respondent's case is that the statutory scheme under ss 16(1) and 13(2) does not require the respondent to give any reason for his decision. The respondent went on to say that the combined effect of ss 16(1) and 13(2) is for the appellant to comply with the statutory conditions therein. The respondent went on the say that should the appellant fail to comply with the said statutory provisions, the respondent has no choice but to de-register SNAP (see p 20 of the respondent's written submission para 6.9). **B** **C**

[50] Firstly, on the question of providing a reason or otherwise for his decision, we are unable to agree with the respondent's contention above. **D**

[51] *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487 is the cause celebre on this point. It is common ground that a body, statutory or administrative, must as a general rule, give reasons for its decisions. Though it is not in every case that it should, we are of the view that, that depends on what the facts are and what is fair in the circumstances. **E**

[52] As Lord Denning in *Breen v Amalgamated Engineering Union* [1971] 2 QB 175 had observed: **F**

> … if a man seeks a privilege to which he has no particular claim — such as an appointment to some post or other — then he can be turned away without a word. He need not be heard. No explanation need be given … but … if he is a man who has some right or interest or some legitimate expectation, of whom it would not be fair to deprive him without a hearing, or reasons given, then these should be afforded him, according as the case may demand. **G**

[53] The giving of reasons, is to our mind, all the more compelling when a fundamental liberty guaranteed by the Federal Constitution is adversely affected in consequence of a decision taken by a public decision-maker, as happened in the instant appeal where arts 8 and 10 appear to have been offended. The furnishing of reasons enables an objective assessment of whether the decision is fair. Hence it forms an integral part of procedural fairness. **H** **I**

[54] The concept of procedural fairness in which the authority of *Padfield and Others v Minister of Agriculture Fisheries and Food and Others* [1968] 1 All ER 694 is almost routinely cited, is very much alive.

[55] The principle as established in *Padfield* was adopted with approval by the Court of Appeal in *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal* [1996] 1 MLJ 481. Thus if no reason is given by the respondent, it is open for this court to conclude that he had no good reason inasmuch as it is open for us to conclude that the respondent had not exercised his discretion in accordance with the law.

[56] The court has the power to scrutinise the authority's decision not only for process, but also for substance (*R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145; [1997] 1 CLJ 147). As was observed in the above case:

> … but Lord Diplock's other grounds for impugning a decision susceptible to judicial review make it abundantly clear that such a decision is also open to challenge on grounds of 'illegality' and 'irrationality' and, in practice, this permits the courts to scrutinise such decisions not only for process, but also for substance.

[57] We agree with counsel for the appellant that the learned High Court Judge had erred in law in applying the authority of *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72; [2002] 4 CLJ 105, as authority in deciding that substantive unfairness cannot be a ground to challenge administrative decision.

[58] This is because in *Sugumar* there was a new s 59A of the Immigration Act 1959/63 which explicitly excluded judicial review. The learned judge held and decided that the doctrine of substantive fairness cannot be invoked as a separate or additional ground of judicial review of a administrative decision, with Parliament having excluded judicial review under the Act.

[59] That may well have been the position under that law. But under the Societies Act 1966 in the instant appeal, there is no such exclusion provision which renders a decision made thereunder unreviewable. The learned High Court judge had therefore erred.

DISPROPORTIONATE DECISON

[60] The doctrine of proportionality dictates that there be a reasonable relationship between the objective which is sought to be achieved and the means used to that end. In our view the decision of the respondent to cancel the registration of SNAP was not proportionate to the purported mischief (dispute) at which it was aimed. As we shall illustrate, by virtue of the doctrine of proportionality, we find that the respondent had not taken into account all relevant factors and had taken into account those which were irrelevant.

[61] From a reading of s 16(1), once the respondent was of the opinion that a dispute has occurred among the members or office-bearers of a registered society as a result of which the respondent is not satisfied of the identity of persons who have been properly constituted as office-bearers of the society, the registrar may serve notice on the society requiring the society to produce to him *evidence of the settlement of any such dispute and a proper appointment of the lawful office-bearers of the society or of the institution of proceedings for the settlement of such dispute.* (Emphasis added.)

[62] Thus by virtue of s 16(1) of the Act, the respondent by letter of 2 July 2002, required SNAP to produce evidence of settlement of dispute on membership or institution of legal proceedings to settle the dispute (the s 16 notice).

[63] The appellant's reply to this s 16 notice, is contained in his 19 July 2002 letter which burgeoned with details of the sequence of events leading towards the illicit EGAM, concluding with evidence of SNAP'S attempts at settlement of the purported disputed.

[64] The appellant also put in place the fact that the deputy president and his rebel group had not only masqueraded as lawful office-bearers, they had also breached the Constitution of SNAP on numerous occasions. The above was contained in the president's letter of 21 August 2002 which also produced evidence of an attempt to settle the dispute on membership, with the impending Triennial General Assembly fixed on 22 February 2003.

[65] In this, we find that there was compliance with the statutory requirement of s 16(1) by the appellant.

[66] However, the respondent's response to the above explanations, in answer to his s 16(1) notice was one of diffidence. Or indifference. Or both.

[67] The respondent stated that s 16(1) of the Act 335 merely requires the respondent to form an opinion that a dispute has occurred of which he is not satisfied of the identity of persons who have been properly constituted as office-bearers of SNAP.

[68] At the risk of repetition, we are reminded *that it is the respondent's case that it is not his duty to determine the validity of the dispute, nor determine the proper identity of office-bearers of SNAP: nor is it the respondent's duty to ascertain whether the proper office-bearers are appointed or elected and whether there was compliance with the Constitution of SNAP.* (Emphasis added.)

[69] In short, it is the respondent's case that he is not concerned with the petty issues and internal strife in SNAP; that his duty is only to direct SNAP to put its house in order.

[70] We find this contention to be at odds with the statutory responsibility imposed on the respondent in s 16(1) to inquire as to the settlement of the dispute on memberships and/or evidence of any institution of legal proceedings to settle the purported dispute.

[71] What is the statutory regime envisaged in s 16(1)?

[72] If the respondent is not required to determine any of the matters spelt out above, what then is the basis for his consequential act in cancelling SNAP? In other words, upon what grounds did he exercise his power to de-register SNAP?

[73] This drastic power could not have been contemplated to have existed in a vacuum. It is our view that the discretion given the respondent in s 16(1) is not unfettered. In scrutinising the documents before us and the legal position of this appeal, we find that the respondent had not exercised his discretion in accordance with the law. In fact, in deciding the way he did, in view of the facts before him, we find that his was an arbitrary decision.

[74] Whilst it is true that under s 13(1)(c), it is the respondent who has to be 'satisfied' that the society (SNAP in this case) had failed to comply with the notice served by the respondent under s 16(1), it is apparent that the respondent had fallen into error by taking into account irrelevant considerations.

[75] In all of the respondent's notices to the appellant, the respondent claimed that as a result of a dispute among the office-bearers of SNAP, he was dissatisfied with the identity of the office-bearers who might have been properly 'appointed'. Thus the respondent's opinion that a dispute had arisen was basically grounded on:

(a) the fact that the legality of the appointment of eight CEC members of the first applicant was challenged by the rebel group; and

(b) the submission of a list comprising new office-bearers of SNAP.

[76] The respondent's reliance of the list of new office-bearers of SNAP in considering that there was a dispute was not justified, since the EGAM was unlawfully convened. By premising his decision on the purported dispute as to the validity of the appointment of the CEC members and the results of the illegally convened EGAM, the respondent had therefore taken into account

irrelevant considerations. And by not addressing his mind to only the lawfully appointed office-bearers, the respondent had taken into account irrelevant considerations.

[77] The respondent had also not taken into account relevant consideration in that there was evidence of settlement of dispute on membership in the holding of an upcoming Triennial General Assembly then. (Emphasis added.)

EXCESS OF JURISDICTION

[78] Thus an objective appraisal of the facts would indicate the proportionality of the respondent's decision. The alleged dispute as to the constitutionality of the apparent eight new CEC members by the president of SNAP could not have any bearing on the purported confusion of the identity of the officer-bearers who might have been properly appointed, simply because they were not office-bearers of SNAP.

[79] Following the respondent's show cause letter to the appellant dated 2 July 2002, the appellant had submitted a detail sufficient explanation as to why there was no issue of dispute relating to the office-bearers in SNAP. Thus by his letter of 19 July 2002 it is our view that the appellant had complied with the requirements of s 16(1) of the 1996 Act.

[80] This was fortified by the president's letters of 23 September 2002 and 25 September 2002, issued pursuant to the s 13(2) notice of 13 September 2002, which gave sufficient reasons as to why SNAP should not be de-registered.

[81] After having complied with the requisites of ss 16 and 13(2) of the 1966 Act, the respondent's decision to cancel SNAP, a society which was formed for more than 41 years ago with 120,000 members could only be viewed as being disproportionate to the purported mischief at which it was aimed (see *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145).

[82] In view of the above, it is our view that the respondent's decision embodied in his letter of notice dated 5 November 2002 purporting to cancel the registration of SNAP was ultra vires and void and the respondent had thus acted in excess of his jurisdiction.

[83] Thus based on the abovementioned facts and circumstances, we unanimously allowed this appeal with costs here and below in the sum of RM10,000.

[84] The order of the learned High Court judge is set aside. The deposit is to be refunded to the appellant.

Appeal allowed with costs here and below.

Reported by Kanesh Sundrum